in the District Court on the bill of exchange was admitted. See Annual Practice, for 1932 p. 193, and also *H. Abdul Shukoor* v. *Mohamed Kassim*, (1927), S. S. L. R. 67. Substituted service should not be allowed.

Dunderdale, for the applicants relied upon S. 62 (1) of the Civil Procedure Code and *Shephards & Co.*, v. *Wilkinson*, 6 T. L. R. 13. As to notice it only applies where counterclaim is within the jurisdiction of the District Court. As to service, the power of attorney granted to the respondents is limited to proceedings on the bill of exchange. As to *res judicata* he relied upon section 62 of the Civil Procedure Code. Counterclaim cannot be filed.

Murison, C. J. made the following order:—

In my opinion where there is a counterclaim in the District Court and it exceeds the jurisdiction of that Court notice must be given (even if the counterclaim is not definitely filed) so that the action can, after disposal of the plaintiff's claim, be kept alive for transfer to the Supreme Court. As no notice was given in this case I must conclude that the action is *res judicata*. There is nothing to transfer.

Further I am not satisfied that the counterclaim was proved to be sufficiently connected with the claim. I follow on this point what I said in *H. Abdul Shukoor* v. *Mohamed Kassim*, (1927) S. S. L. R. 67.

There will therefore be an order in terms.

Order accordingly.

Solicitors for the Applicants .. *Sisson & Delay.*

Solicitors for the Respondents .. *Rodyk & Davidson.*

(Original Civil Jurisdiction)

Terrell, J.

November 30, 1932.

YEO CHIANG SWEE.....Plaintiff

vs.

UNITED DECORATORS.....Defendants

And in the Matter of an Issue ordered To Be Tried.

SHUN FAH & CO.....Plaintiffs

and

the said YEO CHIANG SWEE trading as SENG HUA SAWMILL CO...Defendant

(Singapore Suit No. 128 of 1932.)

Execution—garnishment—money in Sheriff's hands—rival claims between judgment creditor and third party—Government Contract—Assignment of benefit of Contract to third party.

Where a judgment debtor had before judgment assigned the benefit of a contract to another and the money payable under the contract was afterwards paid to the Sheriff under a Notice of Garnishment, the judgment creditor was not entitled to payment out to him of such moneys, the judgment debtor having parted with his interest therein prior to the date of garnishment notice.

This is the matter of an Issue directed to be tried as between a claimant and a Judgment creditor, the Issue being:—

Whether on the 17th May 1932 the Judgment Debtors the above named United Decorators had any beneficial interest in the sum of $3,500/- which was liable to attachment by the said Yeo Chiang Swee the Execution Creditor, the said sum of $3,500 being money paid by the Senior Executive Engineer, Public Works Department to the Sheriff of the Supreme Court at Singapore under a Notice of Garnishment dated the said 17th May 1932 herein and now in the hands of the Sheriff.

The defendant on the Issue obtained in April 1932 a Judgment against the firm of United Decorators for $1353/- and costs. On the 17th May 1932 he issued a Writ of Seizure and Sale and served a Notice of Garnishment on the Director of the Public Works Department attaching moneys in his hands payable under a Contract dated the 4th May between the Government and the firm of United Decorators.

In April 1931 after the tender by the firm of United Decorators had been accepted by the Government for the execution of the works under the Government Contract, an Agreement was entered into between the claimants Shun Fah & Co., plaintiffs on the Issue and the firm of United Decorators whereby (1) plaintiffs on the Issue agreed to furnish the firm of United Decorators with a sum of $5,000/- in order to enable the latter to make the requisite deposit under the Government Contract, (2) To execute the works under the Government Contract, and (3) To pay $1,000/- to the firm of United Decorators absolutely and in consideration thereof the firm of United Decorators agreed to pay over to the plaintiffs on the Issue all moneys payable under the Government Contract as and when received.

In pursuance of the Agreement the firm of United Decorators wrote a letter dated the 15th April 1931 against which the plaintiffs on the Issue advanced to the firm of United Decorators the $5,000/- for deposit under the Government Contract.

In further pursuance of the Agreement the firm of United Decorators executed a Power of Attorney dated the 2nd day of June 1931 in favour of the plaintiffs on the Issue to enable the latter to collect the moneys under the Government Contract as and when due and payable. On the 10th June 1931 the firm of United Decorators and the plaintiffs on the Issue executed an Agreement embodying the terms previously agreed upon between the parties.

On service of the Garnishment Notice the Director of the Public Works Department paid a sum of $3,500/- to the Sheriff, the said sum of $3,500/- being the balance due and payable under the Government Contract above referred to.

The plaintiffs on the Issue now claim that they are entitled as against the Jugment creditor to the said sum of $3,500/

By Clause 5 of the Government Contract any subletting or assignment of the Contract is prohibited without the previous consent in writing of the Government.

S. B. Tan, for the plaintiffs on the Issue.

R. Page, for the judgment creditor, the Defendant on the Issue.

For the plaintiffs on the Issue it was contended that the letter of the 15th April 1931 the Power of Attorney dated the 2nd June 1931 and the Agreement dated the 10th June 1931 constituted an assignment of the moneys payable under the Government Contract and (a) that a Judgment creditor is not entitled to attach debts of which there has been a bona fide assignment by the Judgment Debtor, or the interest therein of the Judgment Debtor has been parted with, (b). that the Judgment Creditor stands exactly in the shoes of the Judgment Debtor and he therefore can only attach such property of his debtor as the debtor could deal properly and without violation of the rights of other parties.

The cases quoted are:—

Ngo Boo Bee vs. Khaw Joo Choe, (1921) 14. S. S. L. R. 90., N. P. Glegg vs. Bromley, (1912) 3 K. B. D. 474.

Pickering vs. Ilfracomb Rail Co., (1868) 3 C. P. C 235.

Vyse vs. Brown, (1884) 13 Q. B. D. 199.

Badeley vs. Consolidated Bank, (1888) 38 Ch. D. 238. .. ..

Civil Procedure Code. Sections 617, 621 and 640.

For the Defendant on the Issue it was contended that the assignment, in view of the clause prohibiting assignments in the Government Contract, was a nullity and that it was in fact a fraud on creditors. Counsel referred to Hudson on Building Contracts (5th edition) on the "Right of builder to sub-let", and at page 496 on the "Test of assignability". Halsbury Vol: 3 page 313 para. 518. *Pritchett and Gold and Electrical Power Storage Co., Ltd.* vs. *Currie*, (1916) 2 Ch. D. 515.

Terrell, J., delivering an oral judgment on the 30th November, 1932 held that the plaintiffs on the issue are entitled to payment of the said sum of $3,500/ as against the Judgment Creditor, the Judgment Debtors having parted with their interest therein prior to the date of the Notice of Garnishment.

Order accordingly

Solicitors for the Plaintiffs on the Issue—

Donaldson & Burkinshaw.

Solicitors for the Defendant on the Issue—

Allen & Gledhill.

(Original Civil Jurisdiction)

Prichard, J.

March 3, 1933.

KHAW JOO CHIE.....Plaintiff

vs.

KHAW JOO TOK & ors.....Defendants

(Penang Suit No: 499 of 1931)

Arbitration—award—points of law—umpire's refusal to state a special case—Ordinance No. 51 (Arbitration) S. 12.

The conduct of an arbitrator in refusing to state in the form of a special case for the decision of the Court the points of law which have arisen in the arbitration is irregular and the award must be set aside.

Re Fischel and Mann, (1919) 2 K.B. 431, In *re Palmer and Hosken*, (1896) 1 Q.B. 131 followed.

MOTION heard before **Prichard J.** in the above suit on 13th day of February 1933.

The facts and arguments appear from the Judgment below.

Saunders, (*Regester* with him), for the Plaintiff.

Pooley for the First defendant.

The second and third defendants did not enter appearance.

Cur. ad. Vult.

Prichard, J.—This was a motion to set aside the award of an umpire.

The Plaintiff and the Defendants, by an agreement in writing dated the 29th day of December, 1916, agreed to become partners in a firm. The agreement provided—clause 18—that all disputes between the partners should be referred to arbitration subject to the provisions of the Arbitration Ordinance, 1890.

The Plaintiff started an action, and on the 11th day of January, 1932, an order was made, upon the application of the first Defendant, by summons of the 19th October 1931, based upon clause 18 of the agreement, that the matters in difference should be referred to two arbitrators and, in the case of their not agreeing, to an umpire.

The arbitration was proceeded with and, later, was referred to an umpire. By a letter of the 13th January, 1933, Messrs. Hogan & Ivens, as Solicitors for the Plaintiff and for the third Defendant, requested that the points of law which had arisen in the arbitration should be referred for a decision of the Court in the form of a special case.

On the 14th of January the umpire's Solicitors replied that the umpire had already come to his decision and had instructed them to draw the award, and that they did not think it necessary to put the award in the form of a special case. The award was published on the 17th of January, 1933.

Applicant contends (*inter alia*) that the umpire was guilty of misconduct in refusing to state a special case, and that the award should be set aside.